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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CHRISTOPHER S. et al., Persons
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CATHLEEN G.,

Defendant and Appellant.

D055901

(Super. Ct. No. J515225)

APPEAL from an order of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

Cathleen G. appeals from an order terminating parental rights to her three children, Juan S., R.S. and Christopher S., then aged 7, 5, and 3, respectively (collectively the children). She contends: (1) substantial evidence does not support the juvenile court's finding that the children were likely to be adopted and (2) the juvenile court should have

applied the beneficial relationship exception to termination of parental rights set forth in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i). (Undesignated statutory references are to this code.) We affirm the juvenile court's order.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2008, the children were removed from Cathleen's custody after police found the family living in a car, without food, money or gasoline. The police arrested Cathleen for child endangerment and resisting arrest. The San Diego County Health and Human Services Agency (the Agency) filed petitions on behalf of the children under section 300, subdivision (b), alleging that they were at risk of harm because Cathleen used methamphetamine, was arrested in front of her children, and had previously lost parental rights to another child. The children were taken to Polinsky Children's Center where Juan tested "presumptively positive" for methamphetamine. The alleged father, Ramon S., had not maintained contact with the family for nine months, reportedly lived in Mexico, and had a history of domestic violence with Cathleen.

Based on Cathleen's admissions, the juvenile court found the petitions true. The court placed the children in licensed foster care, allowed Cathleen supervised visitation, and ordered her to comply with her case plan, including participating in a Substance Abuse Recovery and Management Systems (SARMS) program, counseling and parenting classes. In September 2008, the children were moved to the home of their maternal grandmother and her husband.

At the six-month-review hearing on October 29, 2008, the court terminated reunification services and scheduled a section 366.26 hearing. The Agency reported that Cathleen had not begun therapy, had sporadic compliance with SARMS, was often late for visitation and sometimes failed to show. She had three positive drug tests in one month, admitted drug use, and did not want to continue drug treatment.

At the contested section 366.26 hearing in September 2009, the court received into evidence the Agency's reports documenting Cathleen's visits with the children, her failure to participate in parenting classes or drug treatment classes after the court-mandated services were terminated, and opinions regarding the adoptability of the children. The court found by clear and convincing evidence the children were likely to be adopted and none of the statutory exceptions applied. It terminated parental rights and referred the children to the Agency for adoptive placement.

DISCUSSION

I. Substantial Evidence Supports the Court's Adoptability Finding

Cathleen concedes that the children were "specifically adoptable" because the maternal grandmother wanted to adopt them. She contends, however, that the children were not "generally adoptable," citing evidence that the children acted out while in foster care. We disagree.

If a juvenile court finds by clear and convincing evidence that a child is likely to be adopted, it "shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).) The focus is on the children and whether their age, physical

condition, and emotional state make it difficult to find a willing adoptive parent. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) "[A] prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650, italics in original.) "We review the factual basis of an adoptability finding by determining whether the record contains substantial evidence from which a reasonable trier of fact could make the finding made by the trial court by clear and convincing evidence." (*In re Christiano S.* (1997) 58 Cal.App.4th 1424, 1431.)

In this case, substantial evidence supports the court's adoptability findings. The social worker considered the children "highly adoptable because of their excellent health and sweet and engaging personalities." The children appeared to be meeting their developmental milestones and displayed the ability to quickly ameliorate any deficiencies with the appropriate love and encouragement.

Cathleen points out that the children displayed behavior problems in their first foster placement, with Juan screaming at night, R. not following simple instructions, and Christopher constantly crying and asking for more food. She claims that the children's behavior improved because they were together with a relative, intimating that their behavior would regress if this placement changed. This argument ignores the evidence that the children's behavior improved in their second foster placement when Juan was placed in one foster home, and R. and Christopher in another home. Additionally, Juan

received therapy to work on expressing his emotions in a safe manner, and Christopher received in-home services to help him with delays in expressive language, emotional expression skills, and self-care skills. Thus, there is no basis for attributing the children's improvement solely to their placement with a relative caregiver. Rather, it appears their progress is attributable to the general attention, care and nurturing they received since being removed from Cathleen's custody. (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 524 [behavior improvements support the court's adoptability finding], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 414.)

Moreover, the record reveals there were 3 families in San Diego County, and 48 families outside the county with approved home studies willing to adopt kids with characteristics similar to these children, and numerous families in San Diego County willing to adopt one of the children. Nothing in the record suggests that the personal characteristics of these children would make it difficult to find a prospective adoptive home for them if the maternal grandmother and her husband could not adopt them. Accordingly, we reject Cathleen's claim that there is insufficient evidence to support the court's adoptability finding.

II. Beneficial Relationship Exception

Cathleen contends her parental rights should not have been terminated given the beneficial nature of her ongoing relationship with the children. (§ 366.26, subd. (c)(1)(B)(i).) We are not persuaded.

The juvenile court may terminate parental rights if there is clear and convincing evidence of adoptability (§ 366.26, subd. (c)(1)); however, an exception exists where a parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The parent has the burden of proving that the exception applies. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) "The parent must do more than demonstrate 'frequent and loving contact[,]' [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a 'parental role' in the child's life." (*Id.* at p. 827.) The parent must also show that his or her relationship with the child "'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" (*Ibid.*, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).)

The existence of this relationship is determined by taking into consideration "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs" (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) Examining the evidence in the light most favorable to the judgment, we conclude that substantial evidence supports the court's finding that the beneficial relationship exception does not apply.

In discussing the beneficial relationship exception to adoption, the juvenile court acknowledged that although Cathleen missed some visits with the children, her visits were arguably consistent. The court recognized the affection between Cathleen and the

children, but concluded that Cathleen did not have a parental relationship with them. On several occasions, Cathleen acted inappropriately in front of the children, yelling and cussing at the grandmother or another parent at a play area. When Juan and Christopher climbed on objects, the social worker had to intervene because Cathleen failed to do so. The children did not appear sad or upset when visits with Cathleen ended. Although R. occasionally cried and asked for Cathleen after visits, she displayed similar behavior toward the social worker. At the time of the section 366.26 hearing, the children had been in out-of-home care for a year and eight months. During this time Cathleen failed to make any effort to overcome her parenting problems so that she could provide a safe, stable and protective home for her children. Thus, while Cathleen had a friendly and affectionate relationship with her children, it was not parental and did not promote their well-being. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

In contrast, the children appeared very happy living with the grandmother. The Court Appointed Special Advocate noted that the children have "excelled" in this placement and appeared more emotionally stable. Accordingly, the juvenile court did not err in concluding that the beneficial relationship exception did not apply.

DISPOSITION

The order terminating Cathleen's parental rights is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.